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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-205367

DATE: March 4, 1982

MATTER OF: Spectrum Leasing Corporation

DIOEST:

Protester's timely written response to Commerce Business Daily's synopsis did not address the protester's capability or willingness to meet the agency's disclosed critical delivery requirement. GAO concludes that the response did not constitute an acceptable affirmative written response and the procuring agency was not required to consider its lower proposed costs before placing an order against another vendor's schedule contract.

Spectrum Leasing Corporation (Spectrum) protests the issuance by the Marine Corps of a purchase order to International Business Machines Corporation (IBM) under IBM's schedule contract No. GS-00C-02500 with the General Services Administration (GSA) for lease of one IBM central processor, model No. 4341-K01, at Camp Kinser, Okinawa. Spectrum contends that the award was improper because Spectrum offered the same item at a lower proposed cost. The Marine Corps reports that Spectrum's offer was not acceptable and there was no time to negotiate with Spectrum. We find that Spectrum's protest is without merit.

As background to the subject protest, in response to a recent report to the Congress,*/ the Marine Corps determined that several of its computer systems were economically obsolete and should be replaced. Camp Kinser was the site of one of the systems to be replaced. The Marine Corps conducted a competitive

*/Report to the Congress by the Comptroller General entitled "Continued Use of Costly, Outmoded Computers in Federal Agencies Can Be Avoided," AFMD-81-9, December 15, 1980.

procurement to provide a long-term solution to the problem at Camp Kinser. Spectrum, by letter dated May 26, 1981, notified the Marine Corps of its interest in providing the long-term solution to the Marine Corps' problem. On September 21, 1981, the Marine Corps made award to Federal Data Corporation for delivery and installation of that system in early 1983.

In the interim, the Marine Corps determined in August 1981 that it would be worthwhile replacing the existing obsolete system until the 1983 installation. Circumstances (not questioned by Spectrum) dictated that the interim computer be installed in December 1981. On September 2, 1981, GSA granted the Marine Corps a delegation of procurement authority to replace the obsolete system.

The Marine Corps surveyed potential suppliers and determined that only IBM could meet the critical delivery requirement and IBM was the only potential supplier with a current GSA schedule contract for the model No. 4341-K01. On September 15, 1981, the Marine Corps requested publication in the Commerce Business Daily of notice of the Marine Corps' intent to procure the required model from IBM's schedule contract unless an affirmative written response was received within 15 calendar days of publication demonstrating that the Marine Corps could satisfy its needs more advantageously from another source. Publication occurred on September 25, 1981.

Spectrum submitted a timely written response, expressing interest in supplying the item at lower proposed costs than those in IBM's schedule contract. Spectrum offered 1 day less maintenance coverage per week, and Spectrum did not offer to meet the delivery requirement and did not demonstrate the ability to maintain the system after delivery. The Marine Corps contacted Spectrum to discuss the shortcomings of Spectrum's written response. The Marine Corps reports that Spectrum orally asserted that it could meet the delivery and maintenance requirements. Later, Spectrum submitted an amended written response adding the 1 day per week for maintenance coverage, but Spectrum did not address its capability to meet the delivery and other maintenance requirements.

Prior to receipt of Spectrum's amended response, the Marine Corps determined that since Spectrum did not have a current schedule contract, the Marine Corps would have to negotiate with at least Spectrum and IBM to work out the necessary details. The Marine Corps determined that time did not permit such negotiation and the Marine Corps placed the order under the IBM schedule contract. IBM delivered the system by December 6, 1981.

Spectrum essentially contends that, since May 1981, the Marine Corps knew of Spectrum's interest in meeting the Marine Corps' needs, which was adequate time to work out the necessary details and meet the delivery requirement. In reply, the Marine Corps explains that it was aware of Spectrum's interest in satisfying the Marine Corps' long-term problem but Spectrum's May 1981 letter did not address the instant short-term problem. We note that the Marine Corps apparently did not recognize (or did not undertake solving) the short-term problem until several months after Spectrum's May 1981 letter.

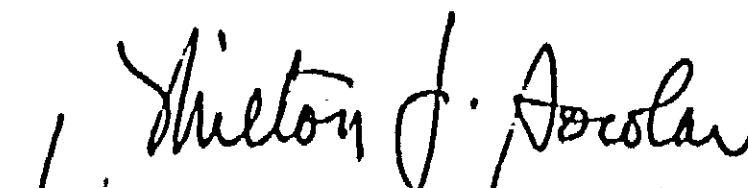
GSA's regulations permit an agency to place orders against schedule contracts, like IBM's, when certain conditions are satisfied. One condition is that the agency considers all written responses to a Commerce Business Daily synopsis, and the agency determines that the use of the schedule contract is the lowest overall cost alternative to the agency. Federal Procurement Regulations § 1-4.1109-6 (amend, 211, January 5, 1981). Accord, Defense Acquisition Regulation § 4-1104.4 (Defense Acquisition Circular No. 76-27, May 15, 1981) (affirmative responses must be considered). Further, the Commerce Business Daily announcement adequately notified potential offerors that only affirmative responses would be considered.

This situation is similar to the one in our decision in the matter of SMS Data Products Group, B-197776, February 18, 1981, 81-1 CPD 103. There, the Commerce Business Daily announcement similarly notified potential offerors of the intent to procure an IBM model No. 4341 or equivalent meeting certain specified performance characteristics unless the contracting activity received a timely affirmative written response containing sufficient technical documentation to verify compliance with the stated characteristics. The protester's written

response did not contain sufficient documentation. There, time permitted the contracting activity to allow the protester to amend its initial written response but, again, the documentation provided was insufficient. We held that the contracting activity was not required to consider the protester's response as an acceptable affirmative response.

Here, in our view, the Marine Corps properly did not consider Spectrum's initial written response (including Spectrum's lower proposed costs) to be an affirmative response demonstrating that the Marine Corps' needs could be more advantageously satisfied by procuring from Spectrum. Spectrum's failure to address its capability or willingness to satisfy the critical delivery requirement constituted an adequate basis for the Marine Corps to reject Spectrum's response without further action. We find that the Marine Corps' published notice adequately communicated the urgency of the procurement and the mandatory nature of the delivery requirement. Clearly, Spectrum's incomplete response--when time was so critical and negotiation was not possible--did not constitute an acceptable affirmative response.

We deny the protest.


for Comptroller General
of the United States